IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHRISTOPHER M. SANDERS,

Plaintiff,

v.

MS. LACOST, MS. NICHOLAI,
JEFF PUGH, MS. WALLACE,
ALFONSO GRAHAM, DEB DUELL,
MS. LUNDMARK, MS. BURNS and
MS. RICHARDSON,

Defendants.

ORDER

11-cv-311-slc[1]

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In this proposed civil action for monetary and injunctive relief, plaintiff Christopher Sanders contends that several defendants violated his constitutional rights while he was incarcerated in the Wisconsin prison system. In particular, he contends that prison officials denied him parole unlawfully, administered an unfair grievance system, retaliated against him and denied him the right to equal protection under the law. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and does not have the means to make

[1] For the purpose of issuing this order, I am assuming jurisdiction over the case.

an initial partial payment.

Because plaintiff is proceeding without prepayment of costs, I must screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B). In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

After reviewing the complaint, I conclude that plaintiff has failed to state any claims upon which relief may be granted. Therefore, I am dismissing his complaint and closing this case.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

A. Programming Requirement and Parole Delay

Plaintiff Christopher Sanders was a prisoner in the Wisconsin prison system from March 25, 2010, until March 30, 2011. He was sentenced to two years' initial confinement, with a release date of June 13, 2011 and a "parole eligibility date" of December 17, 2010. He had no required programs on his judgment of conviction.

Defendant Deb Duell, a classification specialist at the Department of Corrections,

decided that plaintiff should be required to complete an Alcohol and Other Drug Abuse program. Plaintiff was sent to the Stanley Correctional Institution, which does not offer any rehabilitation programs.

On August 30, 2010, defendant Ms. LaCost, a member of the Earned Release Review Commission, interviewed plaintiff about his eligibility for parole. She told plaintiff that although he had excellent behavior, he could not get parole unless he fulfilled his programming requirement. She gave plaintiff a "written endorsement" for Alcohol and Other Drug Abuse programming and told him to request a rehabilitation program at his program review hearing that would take place in September 2010. She scheduled another meeting with him for January 2011.

On September 29, 2010, defendant Ms. Nicholai conducted plaintiff's program review hearing. Plaintiff told Nicholai about his written endorsement for programming from defendant LaCost. Nicholai and two other staff members laughed at him. Nicholai offered plaintiff a four-month Alcohol and Other Drug Abuse residential program that would start in January 2011. Plaintiff argued that his parole eligibility date was December 17, 2010 and that he would lose more than four months of his parole time if he waited until January 2011 to start a rehabilitation program. Eventually, Nicholai offered plaintiff a program starting on October 18 at the Chippewa Valley Correctional Treatment Facility. She told him that she would send him the appropriate paperwork.

Plaintiff received the paperwork for the rehabilitation program on October 25, 2010. The paperwork approved the October 18 start date and said that plaintiff must be at the Chippewa Valley Correctional Treatment Facility a minimum of one week before the start date. Plaintiff wrote to the program review committee to ask why he had not received the paperwork before the start of the program. He received a response stating that he was not a priority.

On November 3, 2010, plaintiff was transferred to the Chippewa facility. He was put on a waiting list for the rehabilitation program and eventually started on November 23, 2010.

On January 2011, defendant LaCost saw plaintiff again and awarded him parole. She told him that he would be released after he completed the risk reduction program. She noted how much parole time plaintiff had lost because of the delay in his compulsory programming and said that she would submit paperwork to expedite plaintiff's release.

Plaintiff graduated from the rehabilitation program on March 9, 2011 and was released on March 30, 2011.

B. Grievance System

Plaintiff had several problems with the prison grievance system while he was incarcerated at the Stanley Correctional Institution and the Chippewa Valley Correctional

Treatment Facility. In particular, he could not afford the costs of making photocopies and mailing packages to the complaint examiner in Madison, Wisconsin, so he had to ask his grandfather to send him money. In addition, defendants Richardson and Burns, both inmate complaint examiners at the Stanley prison, rejected plaintiff's inmate grievances for "ludicrous reasons." Finally, because plaintiff had so many grievances to file and could submit only two grievances each week under the prison regulations, several of his complaints were rejected as untimely.

OPINION

A. Due Process and Early Release

Plaintiff contends that he was deprived of due process when the members of the Program Review Committee and Earned Release Review Commission required him to complete a rehabilitation program before considering him for parole and then put him in a position where he was unable to complete the program. As an initial matter, it is not clear what plaintiff refers to when he says that he was eligible for "parole" and that defendants delayed his "parole." In most cases, a prisoner who was sentenced after 2003 is not eligible for parole under Wisconsin law. Wis. Stat. § 973.01(6). The prisoner might be eligible for the "earned release program" if the sentencing judge decides that the prisoner is eligible to participate in that program. § 973.01(3g).

Regardless whether plaintiff is referring to parole or earned early release, in order to make out a due process claim he must show that he has a liberty interest at stake, and the Supreme Court has held that there is no general constitutional right to parole or early release. Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979). A state may, but need not, create a liberty interest by establishing an entitlement to parole or early release based on specific criteria. Id.; Heidelberg v. Illinois Prisoner Review Board, 163 F.3d 1025, 1026 (7th Cir. 1998) (per curiam). However, Wisconsin's parole regime is completely discretionary. Grennier v. Frank, 453 F.3d 442, 444 (7th Cir. 2006); Wis. Stat. § 304.06(1)(b) ("the earned release review commission *may* parole an inmate" who has completed 1/4 of his sentence) (emphases added). A Wisconsin inmate is not guaranteed parole by meeting set criteria; inmates must always rely on the discretion of the parole board. Grennier, 453 F.3d at 444.

In addition, Wisconsin's early release program does not create a liberty interest. The Department of Corrections is not required to allow every inmate to participate in the earned early release program as soon as he is eligible. Wis. Stat. § 302.05 (1) (department required to provide earned early release programs only in facilities it deems appropriate); id. § 302.05(3)(c) (department decides whether inmate has successfully completed rehabilitation program for purposes of early release eligibility); see also Higgason v. Farley, 83 F.3d 807, 809-10 (7th Cir. 1996) (denying inmate access to educational program for which he would

be eligible for good time credits did not infringe protected liberty interest).

In this case, plaintiff was released before his mandatory release date. He had no liberty interest in parole or earned early release before that date and thus, cannot state a claim for violation of his right to due process.

B. Grievance Process

Plaintiff contends that defendants Burns, Richardson and Lundmark violated his rights under the First and Fourteenth Amendments by administering a costly and ineffective grievance system. In particular, plaintiff contends that the grievance system is too expensive and imposes unfair limits on the quantity of grievances that may be filed each week as well as the deadline by which a complaint must be filed.

Plaintiff's allegations do not state a claim under either the First or Fourteenth Amendments. "[A] state's inmate grievance procedures do not give rise to a liberty interest protected by the Due Process Clause." Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996); see also Owens v. Hinsley, 635 F.3d 950, 953 (7th Cir. 2011) (prison grievance procedures "do not by their very existence create interests protected by the Due Process Clause"); Grieveson v. Anderson, 538 F.3d 763, 772-73 (7th Cir. 2008) (Constitution does not require state to employ any grievance procedure whatsoever). Additionally, the First Amendment does not require that the prison provide a grievance procedure or even require

prison officials to respond to grievances. Owens, 635 F.3d at 953; Hilton v. City of Wheeling, 209 F.3d 1005, 1006-07 (7th Cir. 2000). Thus, plaintiff's complaints about the grievance system do not give rise to affirmative claims.

C. Remaining Claims

In his complaint, plaintiff says that several defendants violated his right to equal protection under the Fourteenth Amendment and retaliated against him in violation of the First Amendment. Under the equal protection clause of the Fourteenth Amendment, government officials must have at least a rational basis for different treatment, City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440 (1985), and in the case of different treatment because of race, even more is required. Johnson v. California, 543 U.S. 499, 506 (2005) (heightened scrutiny applies). In addition, government officials cannot "retaliate" against a prisoner for the prisoner's engaging in protected activity. Bridges v. Gilbert, 557 F.3d 541, 555-56 (7th Cir. 2009); Hoskins v. Lenear, 395 F.3d 372, 375 (7th Cir. 2005).

However, plaintiff does not include any allegations to support his conclusory statements that defendants retaliated against him and violated his right to equal protection. Plaintiff has no allegations that would support a claim of equal protection, because he does not allege that he was treated differently from any similarly situated prisoner. With respect to his retaliation claim, plaintiff does not provide sufficient detail about a protected activity

in which he was engaged, what adverse actions defendants took against him, why plaintiff believes that defendants' actions were in retaliation for his protected activity and why a reasonable person would be deterred from engaging in the protected activity in the future. Bridges, 557 F.3d at 546. It is not enough for plaintiff to say simply that he was "harassed" for filing grievances and complaints. Therefore, these claims must be dismissed for plaintiff's failure to state a claim upon which relief may be granted.

D. Motion to Consolidate

Plaintiff has filed a motion to consolidate this case with two other cases he filed in this court: 11-cv-202-slc and 11-cv-206-slc. I am denying the motion. The three cases involve separate issues and defendants; there are no overlapping parties, facts or legal issues. Moreover, because I am dismissing plaintiff's complaint in this case, there are no claims to consolidate.

ORDER

IT IS ORDERED that

1. Plaintiff Christopher M. Sanders's motion to consolidate this case with case numbers 11-cv-202-slc and 11-cv-206-slc, dkt. #2, is DENIED.

2. Plaintiff is DENIED leave to proceed on his claims in this case. Plaintiff's claims

are DISMISSED for failure to state a claim upon which relief may be granted. The clerk of court is directed to close this case.

Entered this 26th day of May, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge